

**REMARKS**

Claims 1-12, 14-28, and 31-35 are pending in the present application. In the Office Action mailed May 21, 2003, the Examiner issued a non-final Office Action citing newly discovered art. Applicant appreciates the thorough search and application of new art. The Examiner rejected claims 1-4, 6-8, and 31-34 under 35 U.S.C. §102(b) as being anticipated by Japan (04-262013), hereinafter JP '013. The Examiner next rejected claims 1-5 and 32-34 under 35 U.S.C. §102(b) as being anticipated by Kim (USP 6,047,677). Applicant appreciates the indication of allowability of claims 9-12 and 14-28 as well as the indication of allowable subject matter of claim 35.

Claims 12 and 14 have been amended to correct typographical errors. Claim 12 has been amended to change the term "lest" to "least" when referring to the at least one air intake silencer. Claim 14 has been amended so that it begins with a capital letter.

The Examiner rejected claims 1-4, 6-8, and 31-34 under 35 U.S.C. §102(b) as being anticipated by JP '013 stating that the reference shows an air intake silencer for an internal combustion engine, generally as claimed. Applicant has amended claim 1 to further define the present invention. As amended, claim 1 calls for, in part, at least one tuning tube connected in a common plane between the first and second ends of at least one air inlet pipe. It is apparent from Figs. 1-4 of JP '013 that the inlet and outlet of the side branch resonance pipe 4 do not connect in a common plane. Further, as best shown in Figs. 2 and 3 of JP '013, the resonance pipe 4 does not extend in a common plane, but wraps around pipe 3. As such, that which is called for in claim 1, a tuning tube connected in a common plane to an air inlet pipe, is not shown or suggested by JP '013. Therefore, claim 1 and those claims that depend therefrom, are believed to be patentably distinct over JP '013.

Claim 31 calls for, in part, a tuning tube in a wrap-around relationship with another tuning tube. The Examiner states that in one embodiment of JP '013 the tuning tube is disposed in a wrap-around relationship with another tuning tube. Applicant respectfully disagrees.

While Applicant does not necessarily disagree that JP '013 discloses two side branch resonance pipes or interference pipes on an outer circumference of air hose 3 in a double spiral form, Applicant does not agree that JP '013 discloses a first tuning tube in a wrap-around relationship with a second tuning tube. That is, while JP '013 may disclose two interference pipes 5, such are not in wrap-around relationship to each other. A first pipe is wrapped around the air hose 3 and a second pipe is wrapped around air hose 3, however, such is not the same as a

first tuning tube wrapped around a second tuning tube as called for in claim 31. As such, Applicant believes that which is called for in claim 31 is patentably distinct over JP '013.

Regarding claim 32, Applicant has amended claim 32 to incorporate the indicated allowable subject matter of claim 35. Claim 35 has therefore been canceled. As such, as indicated by the Examiner, claims 32-34 are believed to be in condition for allowance.

The Examiner next rejected claims 1-5 and 32-34 under 35 U.S.C. §102(b) as being anticipated by Kim stating that Kim shows an air intake silencer generally as claimed. Claim 1 has been amended to further define the present invention. As amended, claim 1 calls for, in part, at least one tuning tube connected in a common plane between the first and second ends of at least one air inlet pipe. As shown in Fig. 2 of Kim, variable tube assembly 10 is not connected between the first and second ends of the straight tube 3. That is, variable tube assembly 10 has a first end attached at airflow sensor 9 and a second end attached at surge tank 2. The separation between air tube 3 and the variable tube assembly 10 is further evidenced, in the claims of the patent which each call for, in part, a second tube separated from the first tube.

Additionally, claim 1, in part, calls for an air inlet pipe having a first and second end and a passage therethrough. As Kim states, the air silencer systems is disposed between the air duct and the surge tank. Col. 2, lns. 47, 48. Kim further states that "the silencer system has a first tube connecting the air duct and the surge tank, a second tube separated from the first tube and connecting the air duct and the surge tank." Abstract, (emphasis added). As such, the tuning tube of Kim is not connected between the first and second ends of the at least one air inlet pipe as called for in claim 1. As such, claim 1 and those claims that depend therefrom are patentably distinct over Kim.

As stated above, claim 32 has been amended to incorporate the objected to subject matter of claim 35. As such, Applicant believes claim 32, and those claims that depend therefrom, to be in condition for allowance.

Therefore, in light of the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-12, 14-28, and 31-34.

Also, please find included herein in compliance with Applicant's duty of disclosure as set forth in 37 CFR §1.56 listed on the attached equivalent to form PTO-1449 are those additional patents and references that may be relevant to the present application as disclosed by a foreign office. Also included herein is a Credit Card Authorization in the amount of \$180.00 for the

INVENTOR: Justen et al.

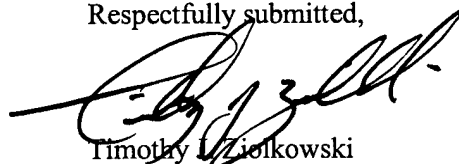
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entry of the above-identified Information Disclosure Statement pursuant to 37 CFR §1.97(c) and §1.17(p).

Applicant respectfully requests that the documents listed on the attached equivalent to form PTO-1449 be considered by the Examiner, that the references be made of record in the present application, and that the initialed copy of the duplicate equivalent to form PTO-1449 be returned to undersigned in accordance with MPEP 609.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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